IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1275 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KAMRAJ KANAJIBHAI PATEL

Appearance:

1. Criminal Appeal No. 1275 of 1992

Mr.I.M.Pandya, learned A.P.P. for Appellant No.

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 25/08/2004

ORAL JUDGEMENT

#. This appeal is filed by the State under Section 378 of the Criminal Procedure Code against the order of

acquittal passed by the learned Chief Judicial Magistrate, Palanpur in Criminal Case No.2520 of 1988 on 03.09.1992.

#. The short facts of the case are such that the respondent-accused was charged for the offences punishable under Sections 323 and 324 of the Indian Penal Code. On 03.09.1992, he gave an application stating that the complainant is deliberately not remaining present on the adjournments and prayed for closing the evidence of the complainant or in alternative to award the cost of conveyance to him. On such application, the learned trial Court on the same day, passed the order to the effect that though many adjournments were given, the complainant is not remaining present and therefore the accused is acquitted of the charges. It is against this order, this appeal is filed.

#. Mr.Pandya, learned A.P.P. submitted that no ample opportunity was given to the prosecution to call the witnesses and on many occasions the respondent-accused was also not present. The trial court ought to have given the chance to prosecution to call the complainant and should not have granted the application given by the respondent-accused on 03.09.1992 and prayed for allowing this appeal and fair chance be given to the petitioner to call the complainant. Though notice was served, the respondent-accused chose not to remain present either in person or through advocate.

#. I have gone through the judgment and paper book. From the rojkam, it appears that the complainant was not present in the Court for more than five times. The reason assigned in the application by the accused dated 03.09.1992 Exh.20 is that he is an agriculturist and due to this case, he is suffering loss as monsoon season is in progress. The learned trial Judge has passed order to the effect that though the summons/warrant was issued on the complainant many times, the State, for the reasons best known to it, has chosen not to remain present and therefore acquitted the accused of the charges. In view of this, I do not think it proper to interfere with the said order. Therefore, this appeal requires to be dismissed and is dismissed accordingly.

(SHARAD D DAVE, J)

srilatha